No. 503

In the Supreme Court of the United States

OCTOBER TERM, 1941

PALM SPRINGS HOLDING CORPORATION, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR RESPONDENT

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The Government does not oppose the granting of a writ of certiorari in this case. The question presented is essentially the same as that presented in *Commissioner* v. *Southwest Consol. Corp.*, 119 F. (2d) 561 (C. C. A. 5); *Commissioner* v. *Alabama Asphaltic Limestone Co.*, 119 F. (2d) 819 (C. C. A. 5); and *Commissioner* v. *Bondholders Committee*, 118 F. (2d) 511 (C. C. A. 9). The first two of these cases (Nos. 286 and 328, respectively) are pending on the Government's petition for certi-

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orari, and the third case (Nos. 128, 129) is pending on the taxpayers' petition for certiorari.

In the instant case the taxpayer is a corporation formed by a committee of bondholders of the Palm Springs Hotel Company (R. 25–27). It acquired the hotel buildings of the Palm Springs Hotel Company at a foreclosure sale for a bid price of $61,800, of which $18,767.96 was paid in cash and the balance by surrender of the bonds (R. 27). Among the assets acquired at this foreclosure sale was a chattel mortgage held by the Palm Springs Hotel Company upon the furniture and fixtures in the hotel, which were owned by the Palm Springs Hotel Operating Company[1] (R. 23, 28). The Operating Company had been operating the hotel under a lease from the Palm Springs Hotel Company (R. 23). Several weeks after the first foreclosure sale the petitioner foreclosed this chattel mortgage and acquired the furniture and fixtures for a bid price of $20,179.25 (R. 28). At that time the Operating Company was indebted under its lease and mortgage in the amount of $77,918.79, and the furniture and fixtures constituted all of its property (R. 28). The question presented is whether the taxpayer may take as its basis for depreciation the basis of these assets in the hands of the Palm Springs Hotel Company and the Palm Springs Hotel Operating Company. The court below sustained the Commissioner's determination that the

[1] Later known as El Mirador Hotel Operating Company.

basis for depreciation was the cost of the property at the foreclosure sale. It rejected the taxpayer's contention that the assets were acquired in connection with a "reorganization" as that term is defined by Section 112 (i) of the Revenue Act of 1932 and that the basis was to be determined under Section 113 (a) (7) of the Revenue Act of 1932.

A contrary result has been reached in the Fifth Circuit in the *Southwest Consol. Corp.* case, *supra*, and in the *Alabama Asphaltic Limestone Co.* case, *supra;* in the Second Circuit in *Commissioner* v. *New Haven & Shore Line R. R. Co.*, decided July 16, not yet officially reported but found in 1941 C. C. H., Vol. 4, par. 9600; and in the Tenth Circuit in *Commissioner* v. *Cement Investors, Inc.*, and *Commissioner* v. *Newton*, decided July 24, 1941, not yet officially reported but found in 1941 C. C. H., Vol. 4, pars. 9614, 9615. Accordingly, although we believe the instant case was correctly decided by the court below, we do not oppose the granting of the writ in view of the conflict among the circuits and the importance of the question in the administration of the revenue laws.

Respectfully submitted.

CHARLES FAHY,
Acting Solicitor General.

SEPTEMBER, 1941.

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